

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**JIMMIE A. WHEELER,**

**Plaintiff,**

**v.**

**FORREST PERRY, et al.,**

**Defendant.**

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**Case No. CIV-16-893-F**

**REPORT AND RECOMMENDATION**

Plaintiff, a prisoner appearing *pro se*, has filed this action under 42 U.S.C. § 1983 alleging various violations of his constitutional rights. United States District Judge Stephen P. Friot has referred the matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). In accordance with that referral, the undersigned granted Plaintiff's application to proceed *in forma pauperis*. On January 30, 2017, the undersigned entered an Order Requiring Service and Answer (ECF No. 19) advising Plaintiff that service must be effected on each defendant. The Court advised the Plaintiff that his failure to submit the required service paperwork and timely serve the Defendants could result in the dismissal of this action. Fed. R. Civ. P. 4(m).

A review of the court file indicates that as of this date, the Plaintiff has neither filed proof of service nor responded to the Order (ECF No. 19) directing him to submit the required copies to properly effect service. In fact, Plaintiff has not responded to the Court's order in any way. Additionally, the Court's records reflect that mail addressed to Plaintiff is being returned as undeliverable, and indicates the Plaintiff has been released

from the custody of the State of Oklahoma. *See* ECF Nos. 18 and 20. As of this date Plaintiff has not submitted a notice of change of address to the Clerk of Court. Plaintiff is responsible for notifying the court of any change of address. *See* LCvR 5.4(a). Moreover, "[p]apers sent by the Court will be deemed delivered if sent to the last known address given to the Court." *Id.*

The deadline for submitting the required copies to properly effect service was February 20, 2017. Thus, Plaintiff has failed to comply with the Court's Orders. Specifically, he has neither filed proof of service nor provided the required paperwork to complete service.

The undersigned finds that Plaintiff's failure to comply with the Court's Order, in light of the Court's right and responsibility to manage its cases, warrants dismissal of this action without prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 n.2, 1162 (10<sup>th</sup> Cir. 2007) (*sua sponte* dismissal for failure to comply with Court's orders permitted under federal rules, and court need not follow any particular procedures in dismissing actions without prejudice for failure to comply).

### **RECOMMENDATION**

Based on the foregoing findings, it is recommended that this action be **DISMISSED WITHOUT PREJUDICE** for Plaintiff's failure to comply with this Court's order, specifically failing to submit the necessary paperwork required for service. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the

Clerk of Court by **March 20, 2017**, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Plaintiff is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10<sup>th</sup> Cir. 2010).

This Report and Recommendation **disposes of all issues** referred to the undersigned Magistrate Judge in the captioned matter.

**ENTERED** on March 3, 2017.

  
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SHON T. ERWIN  
UNITED STATES MAGISTRATE JUDGE